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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

Methyl Iodide: Designating as a Restricted Material, Listing as a Toxic Air Contaminant, and Use Requirements as a Volatile Organic Compound
DPR Regulation No. 11-002

NOTICE OF PROPOSED REGULATORY ACTION

AND NOTICE ON A PROPOSED OZONE STATE IMPLEMENTATION PLAN AMENDMENT REGARDING PESTICIDE EMISSIONS IN THE SACRAMENTO METRO. SAN JOAQUIN VALLEY, SOUTH COAST, SOUTHEAST DESERT, AND VENTURA NONATTAINMENT AREAS

The Department of Pesticide Regulation (DPR) proposes to amend sections 6400, 6452.4, 6624, and 6860; and adopt sections 6446 and 6446.1. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to pesticide chemicals designated as state restricted materials, environmental monitoring, and pesticide enforcement. In summary, the proposed action would designate methyl iodide as a state-restricted material; incorporate it into DPR's volatile organic compound regulatory program; and list methyl iodide as a toxic air contaminant on the basis of its listing as a federal hazardous air pollutant pursuant to Food and Agricultural Code (FAC) section 14021. The proposed action would, in part, make permanent the emergency regulations that are currently in effect.

DPR will accept comments on these amendments that may become part of the ozone state implementation plan (SIP). The federal Clean Air Act requires each state to submit an SIP for achieving and maintaining federal ambient air quality standards for ozone. California's SIP contains an element to reduce pesticidal sources of VOCs. These proposed regulations amend and add to regulations that were previously submitted to the U.S. Environmental Protection Agency (U.S. EPA)

to support a pending SIP amendment. Opportunity to comment on the proposed regulations as part of the SIP amendment is being provided in conjunction with this rulemaking.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on March 28, 2011. Comments regarding this proposed action may also be transmitted via e-mail to <dpr11002@cdpr.ca.gov>, or by facsimile at (916) 324-1452.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight begins with product evaluation and registration; and continues through statewide licensing of commercial and private applicators, pest control businesses, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in FAC Divisions 6 and 7.

Pesticides must be registered (licensed for sale and use) with the U.S. EPA before they can be registered in California. DPR's preregistration evaluation is in addition to, and complements, U.S. EPA's. Before a pesticide can be sold or used, both agencies require data on a product's toxicology and chemistry—how it behaves in the environment; its effectiveness against targeted pests and the hazards it poses to nontarget organisms; its effects on fish and wildlife; and degree of worker exposure.

In 2007, U.S. EPA registered methyl iodide (also called iodomethane) a preemergent fumigant used in agriculture. Injected into soil before crops are planted,

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

the fumigant spreads through the soil to kill weed seeds, plant diseases, and nematodes. It can be applied by drip irrigation under a special protective tarpaulin, or injected into the soil using a tractor that automatically places a tarp over the ground after application. Based on its acute inhalation toxicity, U.S. EPA designated methyl iodide as a federally restricted-use pesticide pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Sales and use of this pesticide are limited to certified applicators and those under their direct supervision, thus controlling the number of persons with direct access to the fumigant.

Concurrent with applications received at the federal level, DPR received applications requesting registration of methyl iodide products for sale and use in California. To register a pesticide, DPR must ensure it can be used safely. In developing effective measures to avoid potentially unsafe pesticide exposures, DPR reviewed studies on possible health and environmental effects, considered a wide range of scientific input, and followed protocols of both U.S. EPA and the World Health Organization. Upon completing its review, DPR established a regulatory concentration target level of 32 parts per billion (ppb) averaged over a 24-hour period for bystanders—five times lower than U.S. EPA's level of 150 ppb, and 96 ppb averaged over an 8-hour period for workers—half of U.S. EPA's allowable level of 193 ppb.

On April 30, 2010, DPR issued a notice of proposed decision to register products containing methyl iodide for use to treat soil before planting of a limited number of crops including strawberries, tomatoes, stone fruits, tree nuts, vines, nurseries, peppers, turf, and field-grown ornamentals. In order to meet these lower exposure standards, DPR required the registrant to obtain U.S. EPA approval on California-specific product labels that have significantly more stringent use controls than U.S. EPA's. Product label approval is obtained by U.S. EPA because under federal law, the federal agency has sole authority over pesticide labels. U.S. EPA approved the California-specific product labels on November 17, 2010. On December 20, 2010, DPR's Director registered methyl iodide for the uses mentioned above.

Prior to registering methyl iodide, DPR filed emergency regulations with the Office of Administrative Law (OAL File No. 2010-1208-01E) to specifically list methyl iodide as a California restricted pesticide in section 6400(e), thereby triggering the requirement for a permit before its use. The emergency regulation became effective on December 20, 2010.

Title 3 CCR section 6400(a) states that any pesticide labeled as a "restricted use pesticide" pursuant to section 3 of FIFRA is also designated as a restricted material in California. Generally, possession and use of a re-

stricted pesticide registered for agricultural use are allowed only under a permit issued from the local county agricultural commissioner (CAC). However, 3 CCR section 6414(b) exempts pesticides deemed restricted materials only by operation of section 6400(a) from permit requirement provided the pesticide is used by or under the supervision of a certified applicator, unless otherwise required by the commissioner. The certified applicator requirement assures that use will be supervised by individuals that have demonstrated their knowledge and skills to properly use pesticides. The permit requirement added by this regulation will provide an immediate and effective mechanism to facilitate CACs' oversight of methyl iodide use to ensure label restrictions are followed and allow CACs to evaluate its use under the specific local conditions of each application site and implement further restrictions through permit conditions if necessary.

The permit process is unique to California. The permit process has the advantage of allowing flexibility in requirements. The problems unique to that use site can be specifically addressed without placing unnecessary burdens on other applications.

In addition, methyl iodide is classified as a volatile organic compound (VOC). A VOC is any organic compound other than those exempted by U.S. EPA pursuant to Title 40, Code of Federal Regulations (CFR) section 51.100. VOCs can contribute to the formation of ground-level ozone, which is harmful to human health and vegetation when present at high enough concentrations. The federal Clean Air Act requires each state to submit an SIP for achieving and maintaining federal ambient air quality standards for ozone. An ozone non-attainment area (NAA) is a geographical region in California that does not meet either federal or state ambient air quality standards. U.S. EPA designates ozone NAAs in CFR section 81.305. Under the SIP, DPR is committed to reduce VOC emissions from agricultural applications of pesticides by specified amounts during the peak ozone season of May 1 through October 31 for five NAAs—Sacramento Metropolitan, San Joaquin Valley, South Coast, Southeast Desert, and Ventura.

Also, the emergency action included a new provision in 3 CCR that specifies the only allowed field fumigation application methods for methyl iodide during the May 1 through October 31 time period that serve as the basis for the calculation of VOC emissions included in the VOC reporting and allowance system set forth in sections 6452.3 and 6452.4 as required to implement the SIP. It also requires the application method used to apply methyl iodide to be specified in the pesticide use report to allow VOC emissions to be calculated based on the reported use.

In January 2008, DPR adopted regulations to reduce pesticide VOC emissions in five ozone NAAs. Those

regulations, in part, adopted field fumigation methods for seven fumigant active ingredients, and required DPR to issue an annual emission inventory report that includes an analysis of pesticide VOC emissions, emission potentials, and emission ratings in the five ozone NAAs. Classified as a VOC, DPR will need to account for methyl iodide emissions in its report to develop regulatory strategies that will be imposed in the upcoming peak ozone time period of May 1 through October 31 to reduce VOC emissions.

Pursuant to section 6452.4(b), a draft emission inventory report is made available to the public for comments. The draft report will be made available to the public for a 45-day comment period for submission of written statements or arguments to the Director for review before finalizing the Annual VOC Emission Report. Section 6452.4 does not specify methyl iodide emissions to be accounted for in the draft report; therefore, the emission inventory and all of methyl iodide's factors (emission potentials, emission ratings, analyses) will not be reflected. The following immediate action is necessary to include methyl iodide in the draft annual report used to determine if allowances must be implemented in order for DPR to continue to achieve and maintain federal ambient air quality standards for ozone as required by the SIP.

DPR proposes to adopt section 6446 to clarify that only fumigation methods specified in proposed section 6446.1 are required in the five NAAs during the peak ozone period. These fumigation methods have known emission ratings. Fumigation methods with known emission ratings must be used within the five NAAs during May–October in order to track emissions. Replant of individual vine or tree–sites (tree holes) less than one contiguous acre is not considered field soil fumigations under the provisions of section 6446.1. Emissions are negligible under these conditions.

DPR proposes to add 6446.1(a) to allow field soil fumigations of methyl iodide identified in the labeling in order to facilitate VOC reduction and tracking. Also, DPR proposes to add a subsection (b) pertaining to use of a method for experimental research purposes pursuant to a valid research authorization issued according to section 6260. While it is critical to be able to limit application methods to allow emission tracking, it is important not to block research to develop lower emission methods. Currently, research is underway to develop new application methods (e.g., new tarpaulins, equipment, lower application rates) with lower emissions than the methods described on the label. Without this provision, research would not be allowed to continue. Continuing to allow experimental research will provide immediate and necessary flexibility for innovations that reduce emissions to occur.

Also, DPR proposes to amend 6624(f) to require persons using methyl iodide within the five NAAs to report a description of the method of application in the pesticide use report required by that section. This reported information is critical in determining VOC emissions.

The action of adopting these methyl iodide field fumigation use requirements described above is critical in DPR's ability to meet its obligation to achieve and maintain federal ambient air quality standards for ozone as required by the SIP. Methyl iodide is considered an alternative to methyl bromide and is considered a VOC emitter under federal law. Under the federal Clean Air Act, 70 percent of methyl bromide production has been phased out.

This proposed action would permanently incorporate methyl iodide into DPR's volatile organic compound regulatory program.

Additionally, FAC section 14021 provides that, "Pesticides which have been identified as hazardous air pollutants pursuant to section 7412 of Title 42 of the United States Code shall be identified by the Director as a toxic air contaminant." Existing section 6860(b) contains a list of pesticides that have been designated as TACs pursuant to FAC 14021. DPR proposes to list methyl iodide as a TAC on the basis of its listing as a federal hazardous air pollutant and its presence in pesticides currently registered for use in California.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a new program or higher level of service of an existing program within the meaning of section 6 of Article XIII B of the California Constitution. DPR has also determined that no non-discretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

The proposed action requires users of methyl iodide to obtain a permit before they use methyl iodide for field fumigation. CACs will be the local agencies responsible for enforcing the proposed regulations. DPR anticipates that there will be no fiscal impact to these agencies because CACs will be following the same permit evaluation process that is currently performed and will not incur any additional costs. Growers would have the option of replacing another fumigant with methyl iodide.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has determined that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is pro-

posed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any adverse impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

AUTHORITY

This regulatory action is being taken pursuant to authority vested by FAC sections 11456, 12976, 13145, 13188, 14004.5, 14005, 14023, and 14102.

REFERENCE

This regulatory action implements, interprets, or makes specific FAC sections 11501, 11708, 11733, 13186, 14004.5, 14005, 14006, 14011.5, 14021, 14023, and 14102.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action, requests for a copy of the Initial Statement of Reasons and/or the proposed text of the regulation, and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Department of Pesticide Regulation
Office of Legislation and Policy
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted above:

Randy Segawa, Environmental Program Manager
Environmental Monitoring Branch
(916) 324-4137

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the proposed text can be made available in an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

TITLE 14. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

NOTICE OF PROPOSED RULEMAKING

Title 14: Natural Resources

Division 7: Solid Waste

Chapter 4: Resources Conservation Programs

**Article 3: REGULATIONS FOR THE RIGID
PLASTIC PACKAGING CONTAIN-
ER PROGRAM**

**Sections Amended: 17943, 17944, 17946, 17946.5,
17947, 17948, 17948.5, and
17949.**

**Sections Added: 17944.1, 17945.1, 17945.2,
17945.3, 17945.4, 17945.5,
17948.1, and 17948.2.**

**Section Repealed: 17942, 17944.2, 17944.5, and
17945.**

PROPOSED REGULATORY ACTION

The Department of Resources Recycling and Recovery (Department) proposes to take action (either amend, add, or repeal) on the following Title 14, California Code of Regulations (14 CCR), Sections 17942, 17943, 17944, 17944.1, 17944.2, 17944.5, 17945, 17945.1, 17945.2, 17945.3, 17945.4, 17945.5, 17946, 17946.5, 17947, 17948, 17948.1, 17948.2, 17948.5, and 17949, of the existing Rigid Plastic Packaging Container Program regulations.

The purpose of the regulatory modification is to delete obsolete provisions, clarify and ensure consistency with recent statutory changes, remove the questions and answer format that stakeholders said was confusing, clarify specific definitions; clarify the certification process to provide clear direction to the regulated industry; clarify the compliance formulas and calculations; refine the penalty calculations; and make other grammatical and punctuation corrections.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Department. **The written comment period for this rulemaking ends at 5:00 p.m. on March 28, 2011.** The Department will also accept oral and written comments during the public hearing described below. Please submit your written comments to:

Gale Tong
Compliance and Enforcement Division
Department of Resources Recycling and Recovery
P.O. Box 4025, M.S. 10A-17
Sacramento, CA 95812-4025
e-mail: RPPC@CALRECYCLE.CA.GOV
Fax: (916) 319-7772
Phone: (916) 341-6517

PUBLIC HEARING

A public hearing to receive comments on the proposed rulemaking is scheduled for April 8, 2011. The Department will hold the hearing in the Conference Room 550 (Fifth Floor) at the Joe Serna, Jr. Cal/EPA Building, 1001 I Street, Sacramento, California. The hearing will begin at 10:00 a.m., and conclude after the public gives all testimony. The Department requests that persons who make oral comments at the hearing also submit written copies of their testimony at the hearing. The Conference Room 550 is wheelchair accessible.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

The Rigid Plastic Packaging Container (RPPC) Act of 1991 (Hart, Chapter 769, Statutes of 1991) was passed by the Legislature, and approved by the Governor on October 9, 1991. The law took effect as Public Resources Code (PRC) Section 42300 et seq. on January 1, 1992. As required by PRC section 42325, regulations were adopted by the California Integrated Waste Management Board (predecessor of the Department of Resources Recycling and Recovery (Department)) on July 1, 1994 and became effective January 1, 1995.

The law requires every RPPC offered for sale in California to meet, on average, one of five compliance criteria. These criteria were designed to encourage reuse and recycling of RPPCs, the use of more postconsumer resin in RPPCs, and a reduction in the amount of virgin resin used to manufacture RPPCs.

The California Integrated Waste Management Board (CIWMB) adopted an all-container recycling rate range of 23.3 percent to 25.2 percent for 1995 and did not pursue any enforcement certification. Because the recycling rate was below 25 percent for 1996 through 2001, the Board directed staff to enforce the requirements of statute and law requiring certification from randomly selected product manufacturers. Changes in statute in 2004 (Chesbro, Chapter 561, Statutes of 2004) eliminated the all-container and polyethylene terephthalate (PET) recycling rate compliance option. Therefore, the Department no longer calculates the all-container recycling rate and requires certifications of compliance from randomly selected product manufacturers.

With several years of experience conducting certifications and taking individual enforcement actions, it has become clear that there are unnecessary redundancies, inconsistencies, and complexities in the regulations. Amendments to the regulations are necessary to clean-up, clarify, and simplify the provisions to level the playing field among regulated product manufacturers.

The purpose of the regulatory modification is to delete obsolete provisions, clarify and ensure consistency with recent statutory changes (SB 743, Chesbro, Stats. 2005, c.666 and SB 1344, Chesbro, Stats. 2006, c. 144), including: remove the question and answer format that stakeholders said was confusing, clarify specific definitions, clarify the certification process to provide clear direction to the regulated industry, clarify the compliance calculations, refine the penalty calculations, and make other grammatical and punctuation corrections.

In March 2007, staff was directed by the Board to convene an Advisory Committee of interested parties

consisting of product and container manufacturers, resin suppliers, recyclers, local governments, environmental groups, and all other interested parties, for the purpose of amending the RPPC regulations. The following are the proposed revisions resulting from the Advisory Committee comments:

- Regulation of Almost Identical Containers

The definition of a rigid plastic packaging container was revised to include containers that are almost identical to regulated containers, but that are not currently regulated by the existing regulations. This regulatory inconsistency creates an inequitable regulatory environment. For example, containers with metal handles are currently not regulated, even though the same container without a handle, or with a plastic handle, is regulated. Thus, companies using containers with metal handles receive a competitive advantage over companies using regulated containers (by avoiding costs to obtain RPPC compliant containers and reduce the number of container lines they would have to document compliance for if the company was asked to certify individual compliance by the Department). The proposed regulatory change corrects this oversight and creates a more equitable regulatory environment for all product manufacturers using similar containers.

This change is consistent with the statutory definition of an RPPC in PRC Subsection 42301(f).

Another inconsistency in the current definition of an RPPC, which allows companies using almost identical non-regulated packaging to gain a competitive advantage over companies using similar regulated packaging, concerns whether or not the container is capable of multiple re-closure. Although statute does not limit RPPCs to packaging that is capable of re-closure (PRC Subsection 42301(f)), existing regulations only regulate containers capable of re-closure (e.g., heat or sonically sealed containers are not regulated). Many of these “sealed” containers otherwise meet the definition of an RPPC while similar packages that are not sealed, and are capable of multiple re-closure, are regulated. Therefore, to address this inconsistency, the regulatory definition of an RPPC is revised from “capable of multiple re-closure” to “capable of at least one closure.” Containers without a lid, such as a nursery pot, remain outside the definition of an RPPC.

Regulation of almost identical container issues are further discussed under Section 17943(b) and (s).

- Definition of Rigid Plastic Packaging Container Volume and Relatively Inflexible Container

Draft informal regulation changes originally proposed to use the labeled volume of the container to determine if the container was regulated. However, stakeholder comments noted that the statutory definition clearly states that an RPPC has volumetric capacity of

between eight (8) ounces and five (5) gallons and that the proposed change was inconsistent with statute. The regulations were changed to be consistent with statute.

Based on stakeholder feedback, clarifying language is added regarding the term “relatively inflexible.” The relevant statutory language states that an RPPC must have a “relatively inflexible finite shape or form.” (PRC Subsection 42301(f)). The Department interprets “relatively inflexible” to mean that some level of flexibility in shape or form is allowable and proposes further clarification in the revised definition. The revision says that a container is able to maintain the same shape whether or not it is holding a product. This would exclude packaging made of film plastic that is flexible and will change shape when holding a product.

Regulation of volume and relatively inflexible container issues are further discussed under Section 17943(s).

- Product Manufacturer Selection and Notification Process

Based on stakeholder feedback that the process for selecting and notifying companies for certification is unclear, as well as concerns about equity in how companies were selected for certification, language is added that defines the process the Department staff will use to select and notify companies that will be asked to certify.

Regulation of product manufacturer selection and notification process and issues are further discussed under Section 17945.1.

- Pre-Certification Process

To address stakeholder concerns regarding allowing sufficient time for implementation, the revised regulations include a new pre-certification process. Newly identified manufacturers would be notified about the requirements of the RPPC law one (1) year before they might be notified that they were selected to demonstrate compliance during a measurement period (calendar year). This also provides the Department staff ample time to work with these newly identified companies to resolve questions and compliance issues prior to including them in a certification cycle.

Regulation of product manufacturer pre-certification process issues is further discussed under Section 17945.1.

- Limitation on use of post-industrial material to meet postconsumer material requirements

Statute excludes post-industrial material commonly reused within an original fabrication or manufacturing process from the definition of postconsumer material (PRC Subsection 42301(g)). In addition, based on information provided by product manufacturers in previous certification cycles and on input from plastic processors on the Advisory Committee, there appear to be established reuse practices and existing markets for

post-industrial material such that significant quantities are not being disposed. The regulations were changed to be consistent with statute and current practices. The proposed definition of the postconsumer material is located under proposed Section 17943(m).

PLAIN ENGLISH REQUIREMENTS

Department staff prepared the proposed regulatory changes pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2(a)(1). The proposed regulations are considered non-technical and can be easily understood by those who will use them.

AUTHORITY AND REFERENCES

Public Resources Code (PRC) sections 40502 and 42325 provide authority for this proposed regulation change. The purpose of the proposed regulation is to implement, interpret and make specific PRC sections 40062, 40170, 42300, 42301, 42310, 42310.2, 42310.3, 42320, 42321, 42322, 42323, 42325, 42326, 42330, and 42340.

FEDERAL LAW OR REGULATIONS MANDATE

No unnecessary duplication or conflict exists between the proposed regulations and federal regulations contained in the Code of Federal Regulations because federal law or regulations do not contain comparable requirements.

MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS

Department staff have determined that there are no local agency mandates and that the proposed regulations will result in no costs to local agencies, state agencies, or school districts, and no costs to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, or other non-discretionary costs or savings on local agencies or school districts, and no costs or savings in federal funding to the state. Department staff has also determined there are no costs or savings to state agencies.

EFFECT ON HOUSING COSTS

Department staff made an initial determination that the proposed regulation changes would not have a significant effect on housing costs.

EFFECT ON BUSINESSES

Department staff made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses or on the ability of California businesses to compete with businesses in other states.

Pursuant to Government Code section 11346.3, the Department has found that a report from businesses is necessary to ensure the health, safety, and welfare of the people of the State of California.

EFFECT ON SMALL BUSINESSES

Department staff made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly impacting small businesses or on the ability of California small businesses to compete with businesses in other states.

The amended regulations do not require small product manufacturers, the small businesses impacted by the amendments, to acquire new equipment or processes. Because of this, there are no initial compliance costs. However, the amended regulations do impose an annual on-going compliance cost of \$196 per year on small product manufacturers.

Pursuant to Government Code section 11346.3, the Department has found that a report from small businesses is necessary to ensure the health, safety, and welfare of the people of the State of California.

EFFECT ON CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESS IN THE STATE OF CALIFORNIA

Department staff has determined that the proposed regulatory action will not affect: 1) the creation or elimination of jobs within the State of California; 2) the creation of new or the elimination of existing businesses within California; or 3) the expansion of businesses currently doing business within the state.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

Department staff analyzed the economic impact of the proposed action. The Department estimates the average, annual ongoing costs to private persons or businesses to comply with the proposed regulations is \$1,749.00. Department staff estimates the average resident will spend less than 9 cents (\$0.09) more each year to purchase the products of manufacturers impacted by the regulations. The annual cost for manufacturer compliance will decrease over time as manufacturing and

material supply processes become more developed and streamlined.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action or the substance of the proposed regulations may be directed to:

Gale Tong
Compliance and Enforcement Division
Department of Resources Recycling and Recovery
P.O. Box 4025, **M.S. 10A-17**
Sacramento, CA 95812-4025
e-mail: RPPC@CALRECYCLE.CA.GOV
Fax: (916) 319-7772
Phone: (916) 341-6517

Back-up contact person to whom inquiries concerning the proposed administrative action or the substance of the proposed regulations may be directed:

Kathleen Marsh
Compliance and Enforcement Division
Department of Resources Recycling and Recovery
P.O. Box 4025, **M.S. 10A-16**
Sacramento, CA 95812-4025
e-mail: Kathy.Marsh@CalRecycle.ca.gov
Fax: (916) 319-7251
Phone: (916) 341-6475

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file and all information upon which the proposed regulations are based available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Gale Tong at the address, e-mail, or telephone number

listed above. For more timely access to the proposed text of the regulations and in the interest of waste prevention, interested parties are encouraged to access the Department's website at <http://www.calrecycle.ca.gov/Laws/Rulemaking/RPPC/default.htm>. Additionally, the final statement of reasons will be available at the above-listed Internet address or you may call the contact persons named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Department may adopt the proposed regulation changes as described in this notice. If the Department makes modifications which are sufficiently related to the proposed text, it will make the modified text — with changes clearly indicated — available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for the modified text should be made to the contact person. The Department will transmit any modified text to all persons who testify at a public hearing if one is held; all persons who submit written comments at a public hearing; all persons whose comments are received during the comment period; and all persons who request notification of the availability of such changes. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 22. DEPARTMENT OF HEALTH CARE SERVICES

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Reimbursement Rates for Emergency
and Post-Stabilization Services in Non-
plan Hospitals, DHCS-08-015

PUBLIC PROCEEDINGS

Notice is hereby given that the Department of Health Care Services (Department) will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In California, the federal Medicaid Program is known as the California Medical Assistance Program, or

Medi-Cal Program. This program provides health care services to welfare recipients and other qualified low-income persons, primarily families with children and the aged, blind, and disabled. Federal law requires the Medi-Cal Program to provide core health care services including: hospital inpatient and outpatient care, nursing services, physician services, and laboratory services.

The Department operates the Medi-Cal Managed Care Program under multiple federal 1915(b) waivers approving variations in the single comprehensive medical care program for eligible low-income individuals required by Title XIX of the Social Security Act in the following sections:

- | | | |
|-----|----------------|---------------------------|
| (a) | 1902(a)(1) | Statewideness |
| (b) | 1902(a)(5) | Single State Agency |
| (c) | 1902(a)(10)(B) | Comparability of Services |
| (d) | 1902(a)(23) | Freedom of Choice |
| (e) | 1902(a)(30) | Basis for Payment |

Articles 2.7 (commencing with Section 14087.3), 2.8 (commencing with Section 14087.5), 2.81 (commencing with Section 14087.96), 2.9 (commencing with Section 14088), and 2.91 (commencing with Section 14089) of Chapter 7 and Articles 1 (commencing with Section 14200) and 7 (commencing with Section 14490) of Chapter 8 of Part 3 of Division 9 of the Welfare and Institutions (W&I) Code establish the statutory authority for the Department to contract with managed care plans to provide Medi-Cal services and case management. Title 22, California Code of Regulations (CCR), Division 3, Chapters 4 (commencing with Section 53800), 4.1 (commencing with Section 53800), 4.5 (commencing with Section 53900), and 6 (commencing with Section 56000), contain the regulations that specifically implement the Medi-Cal managed care program.

This proposed rulemaking action will make specific the reimbursement provisions set forth under W&I Code Section 14091.3 that pertain specifically to emergency outpatient services, emergency inpatient services and post-stabilization services following an emergency admission, as provided to a Medi-Cal beneficiary, by a provider that does not have in effect a contract with a Medi-Cal managed care entity (hereafter referred to as a nonplan provider).

While implementing the provisions of W&I Code Section 14091.3, this rulemaking also addresses provisions of Section 6085 of the Federal Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) (United States Code (USC) Section 1396u-2(b)(2)(D)) also known as the "Rogers Amendment" that establishes reimbursement rates for the provision of emergency services and inpatient hospital services associated with the

emergency to Medicaid beneficiaries by a nonplan provider.

Currently, all Medi-Cal managed care program plans, Prepaid Health Plans (PHPs), Two-Plan Model (TPM) plans, Geographic Managed Care (GMC) plans, County Organized Health System (COHS) plans, and Primary Care Case Management (PCCM) plans, reimburse nonplan providers of emergency outpatient, emergency inpatient and post-stabilization services at different rates. This rulemaking action will clearly establish uniform reimbursement rates for all emergency outpatient, emergency inpatient and post-stabilization services following an emergency admission provided to Medi-Cal beneficiaries by a nonplan provider, thus precluding inequity in reimbursement. This action will specifically accomplish the following:

1. Amend Section 53216 to include a cross reference to proposed Section 53623 related to reimbursement for emergency services to nonplan providers.
2. Amend the title of Article 7 of Chapter 4 of Division 3 of Title 22 of the CCR, to reflect changes proposed through this regulatory action related to reimbursement for emergency outpatient, emergency inpatient and post-stabilization services following an emergency admission.
3. Adopt Section 53623 to set forth uniform reimbursement rates for the provision of emergency outpatient and emergency inpatient services to Medi-Cal beneficiaries by nonplan providers.
4. Adopt Section 53623.5 to set forth uniform reimbursement rates for the provision of post-stabilization services following an emergency admission to Medi-Cal beneficiaries by nonplan providers.
5. Amend Section 53698 to establish language that is consistent with Section 53623, related to reimbursement for emergency outpatient and emergency inpatient services and with Section 53623.5 related to reimbursement for post-stabilization services following an emergency admission.
6. Amend Section 53855 to establish language that is consistent with Section 53623, related to reimbursement for emergency outpatient and emergency inpatient services.
7. Amend Section 53912.5 to establish language that is consistent with Section 53623, related to reimbursement for emergency outpatient and emergency inpatient services.

8. Amend Section 56216 to include a cross reference to proposed Section 53623 related to reimbursement for emergency outpatient and emergency inpatient services to nonplan providers.

AUTHORITY

Section 20, Health and Safety Code; and Sections 10725, 14089.7, 14105, 14124.5, 14203, 14312 and 14454, Welfare and Institutions Code.

REFERENCE

Section 6254(q), Government Code; Sections 1317.2a, 1797.1 and 127800, Health and Safety Code; Sections 10727, 14087.3, 14087.4, 14088, 14088.2, 14088.4, 14088.16, 14089, 14091.3, 14166.245 and 14454, Welfare and Institutions Code; and 42 USC 1396u-2(b)(2)(D).

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on April 1, 2011, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Care Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413; or
2. By fax transmission: (916) 440-5748; or
3. By email to regulations@dhcs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DHCS-08-015" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to

Tony Teresi of Medi-Cal Managed Care Division at (916) 449-5076.

All other inquiries concerning the action described in this notice may be directed to Ben Carranco of the Office of Regulations, at (916) 440-7766, or to the designated backup contact person, Lynette Cordell, at (916) 650-6827.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DHCS-08-015.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.dhcs.ca.gov by clicking on the Decisions Pending and Opportunity for Public Participation link (from the left menu), then selecting the Proposed Regulations link.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: None.
- B. Fiscal Effect on State Government: Savings of approximately \$9,200,000 beginning in the State Fiscal Year 2008-09, excluding the impact of the American Reinvestment & Recovery Act (ARRA).
- C. Fiscal Effect on Federal Funding of State Programs: Savings of approximately \$9,200,000 beginning in the State Fiscal Year 2008-09, excluding the impact of the American Reinvestment & Recovery Act (ARRA).
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other nondiscretionary costs or savings including revenue changes imposed on State or Local Government: None.

DETERMINATIONS

The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the proposed regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would affect small businesses.

The Department has determined that the proposed regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No public hearing has been scheduled; however, any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Susan Pierson, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413; voice (916) 440-7695 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice

For Publication February 11, 2011
CESA CONSISTENCY DETERMINATION
REQUEST FOR
Burbank Avenue Elementary School Project
(2080-2011-003-03)
Sonoma County

The Department of Fish and Game (Department) received a notice on January 25, 2011 that the Roseland School District proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action includes the construction of a new elementary school

with associated facilities on an 11.4-acre site located in Santa Rosa.

The U.S. Fish and Wildlife Service (Service) issued a "no jeopardy" federal programmatic biological opinion (File No. 81420-2009-F-0573)(PBO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers on June 17, 2009, and an amendment to the PBO (File No. 81420-2009-F-0573-2) on January 21, 2011, which considered the effects of the project on the Federally and State threatened California tiger salamander (*Ambystoma californiense*).

Pursuant to California Fish and Game Code Section 2080.1, Roseland School District is requesting a determination that the PBO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the PBO and ITS are consistent with CESA for the proposed Project, Roseland School District will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice

For Publication February 11, 2011
CESA CONSISTENCY DETERMINATION
REQUEST FOR
Dixon Drain Improvement Project
(2080-2011-004-03)
Solano County

The Department of Fish and Game (Department) received a notice on January 27, 2011 that Monk and Associates (M&A) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action includes the enlargement of the Dixon Main Drain and V-Drain channels to provide an increase in flow capacity.

The U.S. Fish and Wildlife Service (Service) issued a "no jeopardy" federal biological opinion (File No. 81420-2010-F-0008-2)(BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers on December 7, 2010 which considered the effects of the project on the Federally threatened and State endangered Delta smelt (*Hypomesus transpacificus*) and the Federally and State threatened giant garter snake (*Thamnophis couchi gigas*).

Pursuant to California Fish and Game Code Section 2080.1, M&A is requesting a determination that the PBO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the

PBO and ITS are consistent with CESA for the proposed Project, M&A will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

NOTICE TO INTERESTED PARTIES February 11, 2011

Announcement of Chemicals Selected by OEHHA for Consideration for Listing by the Carcinogen Identification Committee and Request for Relevant Information on the Carcinogenic Hazards of These Chemicals

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of Proposition 65¹. The Carcinogen Identification Committee (CIC) of OEHHA's Science Advisory Board serves as the State's qualified experts and renders an opinion about whether a chemical has been clearly shown to cause cancer. The chemicals identified by the CIC are added to the Proposition 65 list.

OEHHA has selected the four chemicals below for the CIC's review for possible listing under Proposition 65. OEHHA is initiating the development of hazard identification materials on these chemicals.

Chemicals Selected for Preparation of Cancer Hazard Identification Materials

Chemical	CAS No.
Clomiphene and its salts	—
2,6-Dimethyl-N-nitrosomorpholine	1456-28-6
Haloperidol	52-86-8
Tris(1,3-dichloro-2-propyl) phosphate (TDCPP)	13674-87-8

These chemicals were selected using the procedure described in a 2004 document entitled: "Process for Pri-

oritizing Chemicals for Consideration under Proposition 65 by the State's Qualified Experts." This document is available on the Internet at http://www.oehha.ca.gov/prop65/CRNR_notices/state_listing/pdf/finalPriordoc.pdf.

OEHHA selected these chemicals from those prioritized by the CIC in 2009 and 2010. For details follow these two links:

http://www.oehha.ca.gov/prop65/public_meetings/cic060509.html and

http://www.oehha.ca.gov/prop65/public_meetings/sumCIC101110.html.

Hazard identification materials for each of the four chemicals will be presented at future meetings of the CIC for Committee review for possible listing under Proposition 65.

By this notice, OEHHA is giving the public an opportunity to provide information relevant to the assessment of the evidence of carcinogenicity for any of the chemicals shown above. Relevant information includes but is not limited to:

- cancer bioassays
- cancer epidemiological studies
- genotoxicity testing
- other pertinent data on:
 - pharmacokinetics,
 - biomarkers
 - effects on biochemical and physiological processes in humans.

Interested parties or members of the public wishing to provide such information should send it to the address given below.

The publication of this notice marks the start of a 60-day data call-in period, ending on **Tuesday, April 12, 2011**. The information received during this period will be reviewed and considered by OEHHA as it prepares the cancer hazard identification materials on these chemicals.

Hazard identification materials are made available to the public for comment prior to the CIC's consideration of the chemical for possible listing. The availability of hazard identification materials will be announced in the *California Regulatory Notice Register* and on OEHHA's website. The time, date, location, and agenda of the CIC meeting where a chemical will be considered for listing will be published in the *California Regulatory Notice Register* and posted on OEHHA's website.

We encourage you to submit relevant information on these chemicals in electronic form, rather than in paper form. Submissions transmitted by e-mail should be addressed to coshita@oehha.ca.gov. Submissions in paper form may be mailed, faxed, or delivered in person to the addresses below:

¹ Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 *et seq.*

Mailing Address: Ms. Cynthia Oshita
Office of Environmental Health
Hazard Assessment
P.O. Box 4010, MS-19B
Sacramento, California
95812-4010

Fax: (916) 323-8803

Street Address: 1001 I Street
Sacramento, California 95814

In order to be considered at this point in the process, the relevant information must be received at OEHHA by 5:00 p.m. on Tuesday, April 12, 2011.

<p>RULEMAKING PETITION DECISION</p>
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**TITLE 18. STATE BOARD OF
EQUALIZATION**

**NOTICE OF DECISION AS REQUIRED BY
GOVERNMENT CODE SECTION 11340.7**

On January 4, 2011, the California State Board of Equalization (Board) received a petition from Mr. Stephen H. Bennett dated December 31, 2010, requesting that the Board amend California Code of Regulations, title 18, section (Property Tax Rule) 462.160, *Change in Ownership—Trusts*.

Mr. Bennett's petition stated that the California Supreme Court's decision in *Steinhart v. County of Los Angeles* (2010) 147 Cal.4th 1298 raised two questions regarding whether a change in ownership occurs when: (1) the trustor of a revocable trust holding real property dies and the trust becomes irrevocable; or (2) a beneficiary who has a life estate in an irrevocable trust holding real property dies and other beneficiaries obtain a present interest in the real property. The petitioner further asserted that these two issues were unresolved, that they were causing general confusion, and that the Board needed to amend Property Tax Rule 462.160 to reduce

disputes between taxpayers and county assessors over these issues.

Government Code section 15606, subdivision (c) authorizes the Board to adopt regulations governing county assessors when assessing property for property tax purposes and local boards of equalization when equalizing the assessed value of property, and Property Tax Rule 462.160 was adopted pursuant to that authority.

The Board's Legal Department reviewed the petition and prepared a Chief Counsel Memorandum dated January 14, 2011, which recommended that the petition be denied because question (1) had been fully addressed by the California Supreme Court's opinion in *Steinhart* and question (2) had been addressed by the Court of Appeal's published opinion in *Phelps v. Orange County Assessment Appeals Board No. 1* (2010) 187 Cal.App.4th 653. Then the Board scheduled the petition for consideration at its January 27, 2011, Board meeting, and made the petition, including subsequent addendums submitted by Mr. Bennett, and the Chief Counsel Memorandum available to the public by posting them on the Board's Website.

On January 27, 2011, the Board received a written comment from the California Assessors' Association dated January 26, 2011, recommending that the Board deny Mr. Bennett's petition for the same reasons as the Board's Legal Department. At its meeting on January 27, 2011, the Board voted to deny the petition in whole. That decision was based on the Board's conclusion that Property Tax Rule 462.160 was consistent with both *Steinhart* and *Phelps*, that Mr. Bennett had not demonstrated that tax professionals were generally confused about the answers to his two questions, and that Property Tax Rule 462.160 did not need to be clarified to reduce the number of disputes between taxpayers and assessors.

Interested persons have a right to obtain a copy of the petition and may do so by contacting Mr. Rick Bennion at P.O. Box 942879, 450 N Street, MIC: 80, Sacramento, CA 94279-0080; Telephone (916) 445-2130; Fax (916) 324-3984; or E-mail Richard.Bennion@boe.ca.gov.

Questions regarding this matter should be directed to Tax Counsel Richard Moon at (949) 440-3486 or Richard.Moon@boe.ca.gov.

OAL REGULATORY DETERMINATIONS

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: January 28, 2011
 To: Arvie Carroll
 From: Chapter Two Compliance Unit
 Subject: **2011 OAL DETERMINATION NO. 4(S)**
(CTU2010-1203-01)
 (Summary Disposition issued pursuant to
 Gov. Code, sec. 11340.5; Cal. Code regs., tit.
 1, sec. 270(f))
 Petition challenging as an underground
 regulation California Code of Regulations,
 title 15, section 3040(e)

On December 3, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether California Code of Regulations, title 15, section 3040(e) constitutes an underground regulation. Section 3040 is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).

If a rule meets the definition of a regulation in Government Code section 11342.600, but was not adopted pursuant to the APA, it may be an “underground regulation” as defined in California Code of Regulations, title 1, section 250:

The following definitions shall apply to the regulations contained in this chapter:

(a) “Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, *but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA* and is not subject to an express statutory exemption from adoption pursuant to the APA.

¹ “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

The section you challenge as an underground regulation, California Code of Regulations, title 15, section 3040(e), was duly adopted as a regulatory amendment pursuant to the APA and filed with the Secretary of State. Section 3040(e) was originally filed with the Secretary of State on February 13, 2001 and was effective on March 15, 2001. The text of section 3040(e) has had some minor, substantive amendments, but has remained the same as it currently exists in the California Code of Regulations since the amendment was filed with the Secretary of State on June 9, 2006, effective July 9, 2006. It has not been amended since July 9, 2006.

Because the rule you challenge in your petition is a properly adopted regulation, we find that it is not an underground regulation.²

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/

DEBRA M. CORNEZ
 Assistant Chief Counsel/Acting Director

/s/

Elizabeth A. Heidig
 Staff Counsel

Copy: Matthew Cate
 Tim Lockwood

² The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.
 (B) The challenged rule is contained in a California statute.
 (C) *The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.*

(D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. (Emphasis added.)

DEPARTMENT OF HEALTH CARE
SERVICES

Date: January 25, 2011
To: Timothy Blanchard
From: Chapter Two Compliance Unit
Subject: **2011 OAL DETERMINATION NO. 3(S)**
(CTU2010-1122-01)
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation Medi-Cal Amended First Written Warning Notice of Improper Billing issued by the Department of Health Care Services

On November 22, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether a document titled “Medi-Cal Amended First Written Warning Notice of Improper Billing” (Notice) issued to the University of California Regents, Irvine, by the Department of Health Care Services constitutes an underground regulation. You specifically challenged the language in the section titled “Anesthesia Services—CPT Codes 00100–01999.” The Notice is attached hereto at Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).² Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment.

On December 16, 2009, the Department of Health Care Services issued to the Regents of the University of California, Irvine, the First Written Warning Notice of Improper Billing Under Welfare & Institutions Code Section 14123.25(c) This Notice concerned billing for MediCal. The language you challenge is:

¹ “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

**Anesthesia Services—CPT
Codes 00100–01999**

3. You failed to document supervision of residents in all components of the anesthesia services rendered. Residents performed the follow-up visits unsupervised.

California Code of Regulations, Title 22, Section 51503(j)
No professional fees are payable for services provided independently by residents or students in a teaching setting.

In your petition, you argued that the Notice interprets the “regulatory requirement that professional fee services not be ‘provided independently by residents’ in a manner” that creates an underground regulation. You argue that the Notice creates an onerous interpretation of an ambiguous regulation. You argue that the interpretation in the Notice is in conflict with federal Medi-Cal requirements.

California Code of Regulations, title 22, section 51503(j) states:

(j)The Medi-Cal program, through its intermediary, will pay allowable Medi-Cal rates for direct patient care services in a teaching setting when directly provided by teaching physicians only when such services are provided and billed in accordance with program policies and regulations of the Department of Health Services and when:

- (1) They are performed for necessary treatment of the patient;
- (2) They are not an exercise of teaching supervision without direct patient care services being provided;
- (3) They do not duplicate any medical services billed by any other provider; and
- (4) The teaching physician is not on salary or contract to the hospital for the direct patient care services provided.

No professional fees are payable for services provided independently by residents or students in a teaching setting. (Emphasis added.)

The Notice restates the relevant language of California Code of Regulations, title 22, section 51503(j) and states that compliance with section 51503(j) has not been documented. Section 51503(j) prohibits the reimbursement of fees for services provided independently by residents in a teaching setting. The Notice states that you have not provided documentation establishing the supervision of the residents as required by section 51503(j) for the reimbursement of professional fees. The Notice does not further interpret, implement or make specific section 51503(j). It applies the regulatory requirement to your specific circumstances by distinguishing when professional fees are not covered pursuant to section 51503(j).

As noted in footnote 2, California Code of Regulations, title 1, section 250 defines an “underground regulation” as a rule that “has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.” California Code of Regulations, title 22, section 51503(j) was adopted pursuant to the APA and filed with the Secretary of State. It is a duly adopted regulation and cannot, therefore, be an underground regulation.

We note that statements in your petition concerned consistency of California Code of Regulations, title 22, section 51503(j) with federal law and the clarity of section 51503(j). These concerns are not relevant to OAL’s determination of whether a challenged rule is an underground regulation; therefore, OAL did not address these issues in this summary disposition.

For the reasons discussed above, we find that the rule challenged by your petition is not an underground regulation.³

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/

DEBRAM. CORNEZ

Assistant Chief Counsel/Acting Director

/s/

Kathleen Eddy

Senior Counsel

Copy: David Maxwell–Jolly

³ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL, may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) **The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.**

(D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. (Emphasis added.)

SUSPENSION OF ACTION REGARDING UNDERGROUND REGULATIONS

OFFICE OF ADMINISTRATIVE LAW

SUSPENSION OF ACTION REGARDING UNDERGROUND REGULATIONS

(Pursuant to Title 1, section 280, of the
California Code of Regulations)

DEPARTMENT OF MENTAL HEALTH

On July 19, 2010, The Office of Administrative Law (OAL) received a petition challenging Level II Screening of Potential Sexually Violent Predators issued by the Department of Mental Health (DMH) as an alleged underground regulation.

On January 28, 2011, DMH certified to the OAL that the Department would not issue, use, enforce or attempt to enforce the Level II Screening Guidelines Concerning Sexually Violent Predators and that it had been rescinded; therefore, pursuant to Title 1, section 280 of the California Code of Regulations, OAL must suspend all action on this petition.

ERRATUM NOTICE

ERRATA

In the February 4, 2011 edition of the California Regulatory Notice Register (Register 2011, No. 5–Z), OAL published an “Acceptance of Petition to Review Alleged Underground Regulations.” (p. 143) The agency listed within the heading is incorrect. The correct agency concerning this petition is the State Personnel Board. We regret the error.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by

contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2010-1216-05

AIR RESOURCES BOARD

Enhanced Fleet Modernization Program (Car Scrap)

This Section 100 action modifies the existing Enhanced Fleet Modernization Program (EFMP) by implementing statutory changes made by AB 787 (Chap. 231, Stats. 2010).

Title 13

California Code of Regulations

AMEND: 2621(i), 2623

Filed 01/27/2011

Agency Contact: Trini Balcazar (916) 445-9564

File# 2010-1221-03

AIR RESOURCES BOARD

SF6 Gas Insulated Switchgear

The Air Resources Board submitted this rulemaking action to adopt regulations to reduce sulfur hexafluoride (SF6) emissions from gas insulated switchgear (GIS) used in electric power systems. The regulations establish maximum annual SF6 emission rates for owners of GIS. The emission rate requirements begin in 2012 at ten percent of the GIS owners' total equipment capacity averaged over 2011. The emission rate will steadily decline by one percent per year until 2020, at which time the maximum annual SF6 emission rate will be set at one percent.

Title 17

California Code of Regulations

ADOPT: 95350, 95351, 95352, 95353, 95354, 95355, 95356, 95357, 95358, 95359

Filed 02/02/2011

Effective 02/02/2011

Agency Contact: Amy Whiting (916) 322-6533

File# 2010-1221-01

BOARD OF ACCOUNTANCY

Continuing Education: Exemptions and Extensions

The Board of Accountancy is amending sections 87.9, 88.2 and 90 of Title 16 of the California Code of Regulations concerning continuing education. Most of the changes are mere clean-up of numbering and cross-references. The only substantive change is the requirement that continuing education courses that deal with regulations must also now cover Article 6 of the Accountancy Regulations.

Title 16

California Code of Regulations

ADOPT: 87.9, 88.2, 90

Filed 02/01/2011

Effective 03/03/2011

Agency Contact:

Matthew Stanley

(916) 561-1792

File# 2011-0104-03

BOARD OF EQUALIZATION

Miscellaneous Service Enterprises

In this regulatory action, the Board of Equalization amends a Sales and Use Tax regulation entitled "Miscellaneous Service Enterprises." The amendments relate to the "camps" provision and clarify when a camp qualifies as a school or educational institution (under Revenue and Taxation Code section 6363) and therefore when sales of student meals at a camp are not subject to tax.

Title 18

California Code of Regulations

AMEND: 1506

Filed 01/31/2011

Effective 03/02/2011

Agency Contact:

Richard E. Bennion

(916) 445-2130

File# 2010-1228-01

BOARD OF PILOT COMMISSIONERS

Pilot and Inland Pilot Training

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (Board) amended section 215 of title 7 of the California Code of Regulations to reduce the frequency of the requirement to complete a combination course from every three to every five years and to reduce the required length of the manned scale model shiphandling course from six to five days.

Title 7

California Code of Regulations

AMEND: 215

Filed 02/02/2011

Effective 03/04/2011

Agency Contact: Terri Toohey

(916) 768-5638

File# 2010-1221-02

BOARD OF PSYCHOLOGY

Renewal of License—Disclosure of Discipline & Criminal Convictions

The Board of Psychology (Board) submitted this regulatory action to add sections 1381.7, 1381.8, and 1381.9 to title 16 of the California Code of Regulations. The Board currently mandates that all licensees submit fingerprints to the Department of Justice (DOJ) for a

state and federal criminal offender record information (CORI) search. This action requires all Board licensees who have not previously submitted fingerprints to the DOJ or for whom an electronic fingerprint record does not exist to successfully complete a CORI search as a prerequisite to license renewal. This action also requires licensees to disclose any disciplinary action against their license by any government agency or disciplinary body since their last renewal date.

Title 16
California Code of Regulations
ADOPT: 1381.7, 1381.8, 1381.9
Filed 02/02/2011
Effective 03/04/2011
Agency Contact: Linda Kassis (916) 263-0712

File# 2010-1215-02
BUREAU OF AUTOMOTIVE REPAIR
Consumer Assistance Program Eligibility

This action modifies the Bureau's existing Consumer Assistance Program by implementing statutory changes mandated by AB 787 (Chap. 231, Stats 2010).

Title 16
California Code of Regulations
AMEND: 3394.3, 3394.4, 3394.5, 3394.6, 3394.7
Filed 01/27/2011
Agency Contact: Steven Hall (916) 255-2135

File# 2010-1216-01
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
Factory-Built Housing and Manufactured Housing

This Section 100 action conforms various references in the Department's existing regulations governing factory-built and manufactured housing to the 2010 version of the Title 24 CCR building code adopted by the California Building Standards Commission.

Title 25
California Code of Regulations
AMEND: 3070, 4204, 4210, 4212
Filed 01/28/2011
Agency Contact: Kevin Cimini (916) 445-3338

File# 2010-1217-02
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
Federal Homelessness Prevention and Rapid Re-Housing Program

In this regulatory action, the Department of Housing and Community Development (Department) adopts regulations to establish policies and procedures for the administration of state contracts (standard agreements)

previously entered into between the Department and awardees of federal "Homelessness Prevention and Rapid Re-Housing Program" funds. The regulations implement administrative requirements under federal Public Law 111-5 (the American Recovery and Reinvestment Act of 2009), Division A, Title 12, and under a notice issued by the U.S. Department of Housing and Urban Development pursuant to that federal law.

Title 25
California Code of Regulations
ADOPT: 7980, 7980.1, 7980.2, 7980.3
Filed 01/26/2011
Effective 02/25/2011
Agency Contact: Lenora Frazier (916) 323-4475

File# 2010-1217-01
DEPARTMENT OF JUSTICE
Firearms Microstamping

The Department of Justice (DOJ) (1) amended existing regulation sections in title 11 of the California Code of Regulations to provide specific criteria that semiautomatic pistols and certified laboratories must meet to comply with the new requirements in Penal Code section 12126 relating to microstamping and (2) adopted a new regulation section 4075 which describes the procedure for an alternative method of microstamping technology to be approved.

Title 11
California Code of Regulations
ADOPT: 4075 AMEND: 4047, 4049, 4050, 4051, 4052, 4053, 4057, 4058, 4059, 4060, 4061, 4062, 4063, 4064, 4065, 4066, 4067, 4068, 4070, 4071, 4072, 4073, 4074 REPEAL: 4055
Filed 01/31/2011
Effective 03/02/2011
Agency Contact: Erica Goerzen (916) 322-0908

File# 2010-1220-01
DEPARTMENT OF SOCIAL SERVICES
CACI Grievance Procedures Section 100

This Section 100 action restores the phrase ". . .at least ten (10) business days prior to the hearing" to a subsection in the MPP governing the challenging of listing in the Child Abuse Central Index (CACI). The phrase was mistakenly and unintentionally deleted by the agency during a prior rulemaking.

Title 22, MPP
California Code of Regulations
AMEND: 31-021
Filed 01/31/2011
Agency Contact:
Zaid Dominguez (916) 651-8267

File# 2010-1221-04

MANAGED RISK MEDICAL INSURANCE BOARD

HFP Modification of Mental Health Benefits

The Healthy Families Program (HFP) is California's state- and federally-funded Children's Health Insurance Program (CHIP) established pursuant to title XXI of the federal Social Security Act. The Managed Risk Medical Insurance Board (Board) administers the HFP. The HFP provides comprehensive health, dental and vision insurance to low-income children under the age of 19 with family income above the Medi-Cal income eligibility levels. Approximately, two-thirds of the funding for HFP is provided by the federal CHIP. This certificate of compliance makes permanent the prior emergency regulatory action (OAL file no. 2010-0615-01E) that removed the treatment limitations for mental health and substance abuse treatment services bringing HFP into compliance with federal mental health parity law, clarified that the HFP participating health plans provide care for children with serious emotional disturbance (SED) or a California Children's Service (CCS) eligible condition until the needed care is authorized and provided by the County Mental Health Department or CCS, respectively, extended the 2009-2010 HFP benefit year by three months (from July 1 through October 1), and established ongoing HFP benefit years to run October to October.

Title 10

California Code of Regulations

AMEND: 2699.6500, 2699.6700, 2699.6707, 2699.6721

Filed 02/02/2011

Agency Contact: Dianne Knox (916) 324-0592

File# 2010-1221-05

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Firing of Explosive Materials (Blasting Operations)

This action amends the current requirement that a warning signal be given before firing explosive materials used in blasting to better describe the manner in which the signal must be given to assure that affected persons will clearly hear the warning.

Title 8

California Code of Regulations

AMEND: 5291

Filed 02/01/2011

Effective 03/03/2011

Agency Contact: Marley Hart (916) 274-5721

File# 2010-1214-06

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

Proposition 65 NSRL for 2, 4, 6-Trinitrotoluene

The Office of Environmental Health Hazard Assessment amended title 27, California Code of Regulations, section 25705, which provides specific regulatory levels that pose no significant risk level of cancer under Proposition 65 (Safe Drinking Water and Toxic Enforcement Act of 1986). The amendment adds 2,4,6-Trinitrotoluene (TNT) to the list of chemicals under section 25705(b)(1), provided exposure to TNT does not exceed 8.2 micrograms per day.

Title 27

California Code of Regulations

AMEND: 25705

Filed 01/26/2011

Effective 02/25/2011

Agency Contact: Monet Vela (916) 323-2517

File# 2010-1214-07

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

Proposition 65 NSRL for Glycidol (Carcinogen)

The Office of Environmental Health Hazard Assessment amended title 27, California Code of Regulations, section 25705, which provides specific regulatory levels that pose no significant risk level of cancer under Proposition 65 (Safe Drinking Water and Toxic Enforcement Act of 1986). The amendment adds Glycidol to the list of chemicals under section 25705(b)(1), provided exposure to Glycidol does not exceed 0.54 micrograms per day.

Title 27

California Code of Regulations

AMEND: 25705

Filed 01/26/2011

Effective 02/25/2011

Agency Contact: Monet Vela (916) 323-2517

File# 2010-1217-03

OFFICE OF REAL ESTATE APPRAISERS

Appraisal Management Company Registration (SB 237)

This regulatory action implements SB 237 (Chapter 173, Statutes of 2009) which requires Appraisal Management Companies, effective January 1, 2010, to register with the Office of Real Estate Appraisers (OREA) in order to administer appraisals connected to California property. This action establishes the procedures and requirements for registration, renewal and discipline.

Title 10

California Code of Regulations

ADOPT: 3575, 3576, 3577
 AMEND: 3500, 3522, 3523, 3524, 3526, 3527,
 3528, 3529, 3530, 3582, 3681, 3702, 3703, 3721,
 3724, 3726, 3728, 3731, 3741
 Filed 01/31/2011
 Effective 01/31/2011
 Agency Contact: Kathleen Chovan (916) 341-6126

File# 2010-1216-04
PUBLIC EMPLOYEES RETIREMENT SYSTEM
 Disclosure of Placement Agent Fees, Gifts and Cam-
 paign Contributions

This action defines terms, requires disclosure of in-
 formation connected with contributions and gifts to
 board members, sources of compensation, and other
 matters pertinent to the activities of placement agents
 and their role in securing investments of CalPERS
 funds in the securities marketplace.

Title 2
 California Code of Regulations
 ADOPT: 559
 Filed 01/28/2011
 Effective 01/28/2011
 Agency Contact: Veronica Mora (916) 795-0713

File# 2010-1216-02
STATE PERSONNEL BOARD
 Table of Contents of Title 2, California Code of Regula-
 tions

This action adds a new heading for subchapter 1.3 in
 chapter 1, division 1, title 2. It also adds new headings
 for articles 1 through 4 to that subchapter and amends
 the heading for article 25.

Title 2
 California Code of Regulations
 ADOPT: Headings for Subchapter 1.3, Article 1, Ar-
 ticle 2, Article 3, Article 4 AMEND: Heading for
 Subchapter 1.3 — Article 25
 Filed 01/26/2011
 Agency Contact: John D. Smith (916) 651-1041

File# 2010-1222-01
VETERINARY MEDICAL BOARD
 Principal Address; Exam/Licensing Regulations

This rulemaking action amends sections in title 16 of
 the California Code of Regulations to reflect the change
 to taking the Veterinary and Veterinary Technician ex-
 aminations anytime online as opposed to on specified
 examination administration dates. The rulemaking also
 changes the number of months in advance of the nation-
 al veterinary examination an applicant may apply to
 take that examination. It adds Western University of
 Health Sciences to the list of institutions whose gradu-

ates are exempt from having to take the separate veteri-
 nary law and ethics examination. It also repeals the ex-
 amination application forms and instructions for the
 Veterinary and Veterinary Technician examinations and
 adopts new forms and instructions for each.

Title 16
 California Code of Regulations
 AMEND: 2000, 2010, 2010.1, 2015, 2015.2, 2020,
 2023, 2024 REPEAL: 2014.5, 2017, 2018
 Filed 01/31/2011
 Effective 03/02/2011
 Agency Contact: Ethan Mathes (916) 263-1598

CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN August 31, 2010 TO February 2, 2011

All regulatory actions filed by OAL during this peri-
 od are listed below by California Code of Regulations
 titles, then by date filed with the Secretary of State, with
 the Manual of Policies and Procedures changes adopted
 by the Department of Social Services listed last. For fur-
 ther information on a particular file, contact the person
 listed in the Summary of Regulatory Actions section of
 the Notice Register published on the first Friday more
 than nine days after the date filed.

Title 2

01/28/11 ADOPT: 559
 01/26/11 ADOPT: Headings for Subchapter 1.3,
 Article 1, Article 2, Article 3, Article 4
 AMEND: Heading for Subchapter 1.3 —
 Article 25
 01/25/11 AMEND: 1859.2, 1859.71.6, 1859.77.4,
 1859.81.1, 1859.104
 01/13/11 AMEND: 1859.2, 1859.302, 1866, Form
 SAB 50-02, 50-03, 50-04, 50-06,
 50-07, 50-08, 50-09, 50-10, 61-04,
 40-20, 40-21, 40-24
 01/12/11 ADOPT: 172.9, 172.10 AMEND: 172.6,
 172.7, 172.8, 172.10 (renumbered to
 172.11), 172.11 (renumbered to 172.12)
 REPEAL: 172.9
 01/12/11 AMEND: 59.3 Appendix A
 01/06/11 ADOPT: 649.17.1, 649.19, 649.20
 AMEND: 647.4, 649.14, 649.15, 649.16,
 649.17, 649.26, 649.28, 649.31, 649.32,
 649.33, 649.48, 649.50, 649.51, 649.57,
 649.62
 01/06/11 AMEND: 67.3
 12/28/10 AMEND: Div. 8, Ch. 114, Sec. 59590
 12/21/10 AMEND: 561, 561.1, 561.2, 561.3,
 561.4, 561.5, 561.8, 561.9, 561.11
 (renumbered to 561.10), 561.12

(renumbered to 561.11), 561.13
 (renumbered to 561.12) REPEAL:
 561.10, 561.14
 12/20/10 AMEND: 18723
 12/20/10 ADOPT: 18215.2 AMEND: 18215,
 18225, 18450.1, 18450.4, 18450.5
 12/16/10 ADOPT: 1859.90.1 AMEND: renumber
 1859.90.1 as 1859.90.2 (not shown),
 1859.129, 1859.197
 11/30/10 AMEND: 67.8 (Appendix A)
 11/23/10 ADOPT: 1190, 1190.01, 1190.02,
 1190.03, 1190.04, 1190.05
 11/22/10 AMEND: 1859.2, 1859.83
 11/16/10 AMEND: 7286.1
 11/15/10 AMEND: 18545, 18703.4, 18730,
 18940.2, 18943
 11/15/10 AMEND: 18225
 10/29/10 ADOPT: 1859.90.2 AMEND: Renumber
 1859.90.2 to 1859.90.3, 1859.129,
 1859.197
 10/28/10 AMEND: 59.1
 10/27/10 ADOPT: 1185.21, 1189 AMEND: 1181,
 1181.1, 1181.2, 1181.4, 1183, 1183.01,
 1183.02, 1183.03, 1183.06, 1183.07,
 1183.08, 1183.081, 1183.09, 1183.11,
 1183.12, 1183.131, 1183.14, 1183.2,
 1183.21, 1183.30, 1183.31, 1183.32,
 1185, 1185.2, 1185.3, 1185.4, 1185.5,
 1185.6, 1186, 1187, 1187.2, 1187.3,
 1187.9, 1188, 1188.1, 1188.2, 1188.3,
 1188.31, 1189.1, 1189.3 REPEAL:
 1181.3, 1189.4, 1189.5
 10/26/10 ADOPT: 2297.1
 10/21/10 ADOPT: 58.8 AMEND: 59.3
 10/11/10 ADOPT: 599.937.4
 10/07/10 AMEND: 51.1
 10/07/10 AMEND: 51.2(u)
 10/07/10 AMEND: div. 8, ch. 46, sec. 53500
 10/05/10 AMEND: div. 8, ch. 79, sec. 56800
 10/05/10 ADOPT: 1859.172 AMEND:
 1859.162.3, 1859.171
 10/04/10 AMEND: 1859.2, 1859.81
 10/04/10 ADOPT: 642, 643, 644, 645 AMEND:
 640, 641
 09/27/10 AMEND: 18942, 18944.1
 09/07/10 AMEND: Renaming of headings only, as
 follows: Article 4 of Chapter 1 to new
 Subchapter 1.2; Subarticles 1–10 of nes
 Subchapter 1.2 to new Articles 1–10; and
 Chapters 1–5 of new Article 6 to new
 Subarticles 1–5.
 09/02/10 ADOPT: 60804.1, 60815.1, 60820.1,
 60855, 60856, 60857, 60858, 60859,
 60860, 60861, 60862, 60863 AMEND:
 60841, 60846, 60853 REPEAL: 60855

09/01/10 AMEND: 234, 548.70
 09/01/10 AMEND: 234, 548.70

Title 3

01/13/11 AMEND: 3425(b), (c)
 01/13/11 AMEND: 3591.20(a)
 01/13/11 AMEND: 3591.15(a), (b)
 01/11/11 AMEND: 1430.142
 01/11/11 AMEND: 3591.20(a)
 12/30/10 AMEND: 3435(b)
 12/29/10 AMEND: 3434(b) and (c)
 12/20/10 ADOPT: 6446, 6446.1 AMEND: 6400,
 6452.4, 6624
 12/14/10 AMEND: 3434(b) and (c)
 12/14/10 AMEND: 850
 12/09/10 AMEND: 6860
 12/06/10 AMEND: 3906
 11/30/10 AMEND: 3406
 11/24/10 ADOPT: 3701, 3701.1, 3701.2, 3701.3,
 3701.4, 3701.5, 3701.6, 3701.7, 3701.8
 AMEND: 3407
 11/24/10 ADOPT: 3701, 3701.1, 3701.2, 3701.3,
 3701.4, 3701.5, 3701.6, 3701.7, 3701.8
 AMEND: 3407
 11/22/10 AMEND: 3435(c)
 11/18/10 AMEND: 105, 108
 11/17/10 AMEND: 3434(b)
 11/17/10 AMEND: 3434(b)
 11/17/10 AMEND: 3437
 11/15/10 REPEAL: 3000, 3001, 3002, 3003, 3004
 11/09/10 AMEND: 3437
 10/27/10 AMEND: 6447, 6447.2, 6784
 10/21/10 AMEND: 3591.5(a)
 10/18/10 AMEND: 3437(b)
 10/11/10 AMEND: 3558(a)
 10/11/10 AMEND: 3855
 10/06/10 ADOPT: 1391, 1391.1, 1391.2, 1391.3,
 1391.4 AMEND: 1391 (renumbered to
 1391.5), 1391.1 (renumbered to 1391.6)
 10/01/10 AMEND: 3434(b)
 09/27/10 AMEND: 3
 09/27/10 AMEND: 3437
 09/22/10 AMEND: 3591.20(a)
 09/14/10 AMEND: 3434(b)
 09/13/10 ADOPT: 3437
 09/09/10 AMEND: 3434(b)
 09/02/10 AMEND: 3425(b)

Title 4

01/24/11 ADOPT: 4140, 4141, 4142, 4143, 4144,
 4145, 4146, 4147, 4148, 4149, 4200,
 4201, 4202, 4203, 4204, 4205
 01/06/11 AMEND: 8070, 8072, 8073, 8074
 01/06/11 ADOPT: 5000, 5010, 5020, 5021, 5030,
 5031, 5032, 5033, 5034, 5035, 5036,
 5037, 5038, 5039, 5050, 5051, 5052,

	5053, 5054, 5055, 5056, 5060, 5061, 5062, 5063, 5064, 5080, 5081, 5082, 5100, 5101, 5102, 5103, 5104, 5105, 5106, 5107, 5120, 5130, 5131, 5132, 5140, 5141, 5142, 5143, 5150, 5151, 5152, 5153, 5154, 5155, 5170, 5180, 5181, 5182, 5183, 5190, 5191, 5192, 5193, 5194, 5200, 5210, 5211, 5212, 5220, 5230, 5231, 5232, 5240, 5250, 5260, 5265, 5266, 5267, 5268, 5269, 5270, 5275, 5280, 5281, 5282, 5283, 5290, 5291, 5300, 5310, 5311, 5312, 5313, 5314, 5315, 5320, 5321, 5330, 5340, 5350, 5360, 5370, 5371, 5372, 5380, 5381, 5382, 5383, 5384, 5400, 5410, 5411, 5420, 5421, 5422, 5423, 5430, 5431, 5432, 5433, 5434, 5435, 5440, 5450, 5460, 5461, 5470, 5480, 5490, 5491, 5492, 5493, 5494, 5500, 5510, 5520, 5530, 5531, 5532, 5533, 5534, 5540, 5550, 5560, 5570, 5571, 5572, 5573, 5580, 5590		
12/14/10	AMEND: 10322(h)(5), 10325(c)(3)(B), 10325(c)(8)		
12/07/10	ADOPT: 12347, 12348 AMEND: 12002, 12345		
11/29/10	AMEND: 1374.2		
11/29/10	AMEND: 8070, 8072, 8073, 8074		
11/04/10	AMEND: 8034, 8035, 8042, 8043		
11/02/10	AMEND: 12480, 12488, 12492, 12494, 12496, 12498, 12499, 12501, 12502, 12504, 12508		
10/26/10	AMEND: 1844		
10/04/10	ADOPT: 10030, 10031, 10032, 10033, 10034, 10035, 10036		
09/29/10	AMEND: 8070, 8072, 8073, 8074		
09/15/10	AMEND: 10323		
09/09/10	AMEND: 1766		
09/09/10	AMEND: 10152, 10153, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162, 10164		
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01/14/11	ADOPT: 11968.5		
01/10/11	AMEND: 30730, 30731, 30735, 30736		
12/23/10	AMEND: 2, 30, 50, 70, 401, 641, 1021, 1023.1, 1025, 1030, 1633, 3082, 3088.1,		
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12/22/10	AMEND: 80413.3 REPEAL: 80430.2		
12/02/10	ADOPT: 4700, 4701, 4702, 4703		
12/01/10	ADOPT: 76020, 76140, 76212, 76240 AMEND: 76000, 76120, 76130, 76200, 76210, 76215 REPEAL: 76010, 76240		
11/18/10	ADOPT: 70030, 70040, 71135, 71320, 71390, 71395, 71400.5, 71401, 71475, 71480, 71485, 71640, 71650, 71655, 71716, 71750, 71760, 74110, 74115 AMEND: 70000, 70010, 70020, 71100, 71110, 71120, 71130, 71140, 71150, 71160, 71170, 71180, 71190, 71200, 71210, 71220, 71230, 71240, 71250, 71260, 71270, 71280, 71290, 71300, 71310, 71340, 71380, 71400, 71405, 71450, 71455, 71460, 71465, 71470, 71500, 71550, 71600, 71630, 71700, 71705, 71710, 71715, 71720, 71730, 71735, 71740, 71745, 71770, 71810, 71850, 71865, 71920, 71930, 74000, 74002, 74004, 74006, 74120, 74130, 74140, 74150, 74160, 74170, 74190, 74200 REPEAL: 70030, 71000, 71005, 71010, 71020, 71330, 71360, 71410, 71415, 71420, 71490, 71495, 71505, 71510, 71515, 71520, 71555, 71560, 71565, 71605, 71610, 71615, 71650, 71655, 71725, 71775, 71800, 71805, 71830, 71855, 71860, 71870, 71875, 71880, 71885, 71890, 71900, 71905, 71910, 72000, 72005, 72010, 72020, 72101, 72105, 72110, 72120, 72130, 72140, 72150, 72160, 72170, 72180, 72190, 72200, 72210, 72220, 72230, 72240, 72250, 72260, 72270, 72280, 72290, 72300, 72310, 72330, 72340, 72360, 72380, 72400, 72405, 72410, 72415, 72420, 72450, 72455, 72460, 72465, 72470, 72500, 72505, 72515, 72520, 72550, 72555, 72560, 72565,		

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			11/02/10	ADOPT: 5197
			11/02/10	AMEND: 1504, 1637, 3622
			10/27/10	ADOPT: 1600.1 AMEND: 1600, 1601
			10/05/10	AMEND: 3395
			09/27/10	AMEND: 10232.2
			09/23/10	AMEND: 9767.3
			09/14/10	AMEND: 10253.1
			09/13/10	AMEND: 5206(d)(4)(a), 1532.2(d)(4)(a), 8359(d)(4)(a)
			09/01/10	AMEND: 1502
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			12/06/10	ADOPT: 3200.028, 3200.252, 3630.05, 3630.10, 3630.15 AMEND: 3630, 3650
			10/18/10	ADOPT: 1810.326, 1810.376, 1810.439 AMEND: 1810.317, 1810.321, 1810.323, 1810.345, 1810.350, 1810.360, 1810.365, 1810.375, 1810.380, 1810.425, 1810.430, 1810.435, 1810.436, 1810.438, 1820.220, 1820.225, 1830.215, 1840.112, 1850.213
			09/20/10	ADOPT: 7212.1, 7212.2, 7212.3, 7212.4 AMEND: 7210, 7211, 7212
			09/20/10	ADOPT: 7213, 7213.1, 7213.2, 7213.4, 7213.5, 7213.6, 7214, 7214.1, 7214.2, 7214.3, 7214.4, 7214.5, 7214.6, 7214.7, 7214.8, 7215, 7215.1, 7216, 7216.1, 7216.2, 7218, 7220, 7220.3, 7220.5, 7220.7, 7221, 7225 AMEND: 7213.3, 7224, 7226, 7226.1, 7226.2, 7227, 7227.1, 7227.2 REPEAL: 7213, 7213.1, 7213.2, 7214, 7215, 7216, 7218, 7219, 7220, 7221, 7225
	10/18/10	AMEND: 80015, 80015.1, 80015.2, 80015.3, 80015.4, 80021, 80021.1, 80024.7, 80024.8		
	10/18/10	ADOPT: 1216.1		
	10/01/10	AMEND: 57020 REPEAL: 50721, 50722, 50723, 50724, 50725, 50727, 50728, 50729, 50730, 50731, 50732		
	09/13/10	ADOPT: 4800, 4801, 4802, 4803, 4804, 4805, 4806, 4807		
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	11/23/10	AMEND: 206, 207		
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	10/13/10	AMEND: 212.5		
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	02/01/11	AMEND: 5291		
	01/20/11	AMEND: 344.6, 344.16, 344.18		
	12/29/10	AMEND: 1709		
	12/09/10	AMEND: 2813		
	12/09/10	AMEND: 1742		
	12/08/10	AMEND: 344.30		
	12/08/10	AMEND: 1648, 1675, 3276, 3277, 3278, 3287, 3413, 3458.1 REPEAL: 1678, 3279, 3280		
	11/15/10	AMEND: 9701, 9702		
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			02/02/11	AMEND: 2699.6500, 2699.6700, 2699.6707, 2699.6721
			01/31/11	ADOPT: 3575, 3576, 3577 AMEND: 3500, 3522, 3523, 3524, 3526, 3527, 3528, 3529, 3530, 3582, 3681, 3702, 3703, 3721, 3724, 3726, 3728, 3731, 3741
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			12/31/10	ADOPT: 2582, 2582.1, 2582.2, 2582.3
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			12/29/10	AMEND: 2542.4
			12/23/10	ADOPT: 1409.1, 1414, 1422.4, 1422.4.1, 1422.5, 1422.6, 1422.6.1, 1422.6.2, 1422.6.3, 1422.7, 1422.7.1, 1422.9,

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11/04/10	AMEND: 2689.8(c)	11/02/10	ADOPT: 51.26
10/21/10	AMEND: 2498.6	10/07/10	ADOPT: 994.9, 994.10, 994.11, 994.12, 994.13, 994.14, 994.15 AMEND: 994.1, 994.2, 994.4, 994.5, 994.6 REPEAL: 994.9, 994.10, 994.11, 994.12, 994.13, 994.14, 994.15, 994.16
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		01/03/11	AMEND: 1239
		12/23/10	AMEND: 423.00
		11/09/10	AMEND: 551.15, 551.17, 556, 558, 561, 586
		11/08/10	AMEND: 1956.8, 1958, 1961, 1976, 1978, 2111, 2122, 2136, 2141 REPEAL: 2166, 2166.1, 2167, 2168, 2169, 2170, 2171, 2172, 2172.1, 2172.2, 2172.3, 2172.4, 2172.5, 2172.6, 2172.7, 2172.8, 2172.9, 2173, 2174
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		10/19/10	AMEND: Title 13: 2025, 2449, 2449.3, 2452, 2453, 2456, 2458, 2460, 2461, 2462 and Title 17: 93116.1, 93116.2, 93116.3
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		01/05/11	AMEND: 4970.00, 4970.01, 4970.05, 4970.08, 4970.09, 4970.13
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		12/30/10	ADOPT: 1722.8, 1722.8.1, 1722.9, 1773.1, 1773.2, 1773.3, 1773.4, 1773.5, 1774.1, 1774.2, 1777, 1777.1, 1777.2, 1777.3 AMEND: 1722, 1760, 1770, 1773, 1774 REPEAL: 1724.2
		12/03/10	AMEND: 29.80
		11/22/10	AMEND: 1220
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 10/07/10 AMEND: 20030, 20040, 20050, 20060, 20070, 20080, 20090, 20100, 20110
 10/05/10 AMEND: 125, 125.1
 10/05/10 ADOPT: 700.3 AMEND: 105, 105.1, 106, 107, 110, 112, 116, 119, 120.2, 120.3, 102.6, 120.7, 122, 123, 124.1, 126, 147, 149.1, 150, 150.02, 150.03, 150.05, 180.3, 180.15, 700.4, 705
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 11/16/10 AMEND: 1730, 1778, 1790
 10/14/10 ADOPT: 4168.7, 4171.5 AMEND: 4166, 4168, 4168.5, 4169, 4169.5, 4169.9, 4170.5, 4171, 4173, 4174, 4174.5, 4174.6 REPEAL: 4172
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 10/18/10 AMEND: 3394.3, 3394.4, 3394.6
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 10/18/10 AMEND: 1020 REPEAL: 471

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12/15/10 AMEND: 100105

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10/26/10 AMEND: 97234, 97264, 97267

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10/06/10 AMEND: 100080

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